



Gary L. Mann, Director - Regulatory Affairs

98 San Jacinto Blvd., Suite 700, Austin, Texas 78701-4039
(512) 434-2517 Facsimile (512) 433-3555 Internet gmann@ixc-comm.net

RECEIVED

JAN 10 1997

January 10, 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL BY HAND

Re: CC Docket No. 96-45 -- Reply Comments
of IXC Communications, Inc.

Dear Mr. Caton:

On behalf of IXC Communications, Inc. ("IXC"), enclosed please find an original and four (4) copies of IXC's Reply Comments in the above-referenced matter. A copy of IXC's Reply Comments is also being served today by U.S. mail on each of the individuals identified in the service list attached to the Commission's November 18, 1996 Public Notice [DA 96 1891]. Further, one copy of IXC's Reply Comments is being provided to International Transcription Service. Finally, a diskette with IXC's Reply Comments is being provided to Ms. Sheryl Todd at the Common Carrier Bureau.

Should you have any questions, please do not hesitate to contact me.

Sincerely yours,

Gary L. Mann
Gary L. Mann

Enclosures

cc: Service List
ITS
Ms. Sheryl Todd

No. of Copies rec'd
List ABCDE

DLF

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

JAN 10 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

Federal-State Joint Board
on Universal Service

)
)
)
)
)
)

CC Docket No. 96-45

REPLY COMMENTS OF IXC COMMUNICATIONS, INC.

Gary L. Mann
Director - Regulatory Affairs
IXC Communications, Inc.
98 San Jacinto, Suite 700
Austin, Texas 78701
(512) 434-2517

January 10, 1997

TABLE OF CONTENTS

	Page
I. Introduction And Summary	1
II. IXC Is A Carrier's Carrier And Thus Does Not Provide Telecommunications Services	2
III. The 1996 Act Imposes Universal Service Funding Obligations Only On Common Carriers	3
IV. Conclusion	5

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Federal-State Joint Board
on Universal Service

)
)
)
)
)
)

CC Docket No. 96-45

REPLY COMMENTS OF IXC COMMUNICATIONS, INC.

I. Introduction And Summary

As was explained in its December 16, 1996 Comments, IXC Communications, Inc. ("IXC") is a carrier's carrier and not a common carrier. Section 254(b)(4) of the Telecommunications Act of 1996 ("1996 Act") requires "[a]ll providers of telecommunications services" to contribute to universal service funding. Section 3(a)(51) of the 1996 Act defines "telecommunications service" to mean "the offering of telecommunications for a fee directly to the public" As a carrier's carrier, however, IXC does not offer or provide "telecommunications service" to the public or any segment of the public. Therefore, IXC respectfully requests that the Commission make clear in any final order resulting from this proceeding that carrier's carriers, such as IXC, are not statutorily obligated to contribute to the funding of universal service.

II. IXC Is A Carrier's Carrier And Thus Does Not Provide Telecommunications Services

IXC is a carrier's carrier, meaning that it provides bulk communications capacity on a wholesale basis, pursuant to individualized long-term contracts, to large users or interexchange carriers. IXC does not hold itself out to serve the public at large on an indiscriminate basis and does not provide service to end users. As the courts and this Commission have consistently recognized, IXC is a carrier's carrier, whose activities do not involve common carriage and hence are not subject to the Commission's jurisdiction.¹ The 1996 Act continues to recognize the distinction between common carrier activities, which are subject to the Commission's jurisdiction, and carrier's carrier activities over which the Commission has no statutory authority.

Section 3(a)(49) of the 1996 Act defines "telecommunications carrier" as "any provider of telecommunications services . . ." and further states that "[a] telecommunications carrier shall be treated as a common carrier under this Act only to

¹ See, e.g., National Association of Regulatory Utility Comm'rs v. FCC, 525 F.2d 630 (D.C. Cir.), cert. denied, 425 U.S. 992 (1976) ("NARUC I"); NorLight, 2 FCC Rcd 132, reconsideration denied, 2 FCC Rcd 5167 (1987); Lightnet, File No. W-P-C-5166, Memorandum Opinion and Order, FCC 85-276 (released May 20, 1985), 58 Rad. Reg. 2d (P&F) 182 (1985).

the extent that it is engaged in providing telecommunications services" Section 3(a)(51) of the 1996 Act defines "telecommunications service" as "the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public" Thus, since carrier's carriers do not offer "telecommunications service," they are not common carriers under the 1996 Act.

**III. The 1996 Act Imposes Universal Service Funding Obligations
Only On Common Carriers**

Section 254(b)(4) of the 1996 Act imposes universal service funding obligations on "[a]ll providers of telecommunications services" As discussed in Section II supra of these Reply Comments, Sections 3(a)(49) and (51) of the 1996 Act, when read together -- as they must be -- define "providers of telecommunications services" to include only common carriers. Simply put, there is no current statutory authorization for the Commission to impose universal service funding obligations on carrier's carriers.

The Commission and the Joint Board already appear to have implicitly recognized that only common carriers are subject to universal service funding obligations.

Reply Comments of IXC Communications, Inc.
January 10, 1997

Thus, for example, at paragraphs 242-46 of its December 24, 1996 Access Charge Reform Notice of Proposed Rulemaking (CC Docket No. 96-262), in discussing the Joint Board Recommended Decision on universal service funding, the Commission speaks of a universal service funding assessment on the interstate revenues of "all interstate telecommunications carriers." As previously discussed, the term "telecommunications carrier," as defined by the 1996 Act, does not include carrier's carriers. Thus, carrier's carriers are not subject to the 1996 Act's universal service funding obligation. In an effort to avoid misunderstanding as well as the possibility of future protracted proceedings on this issue, IXC respectfully requests that any final Commission order resulting from this proceeding clearly state that carrier's carriers are not statutorily required to contribute to funding universal service.

IXC anticipates that its position on this issue may be criticized by some as an attempt to shirk responsibility. Nothing could be further from the truth. Those interstate interexchange carriers using IXC-provided capacity to provide their own common carrier telecommunications services will be assessed for universal service funding. Obviously, if IXC were to be also assessed -- something IXC submits cannot lawfully be done -- the same IXC facilities would in effect be doubled-charged for universal service funding. Were this to occur, the resulting situation would not be competitively neutral, because IXC, unlike its interexchange carrier customers, would not

Reply Comments of IXC Communications, Inc.
January 10, 1997

receive the types of credits that the Access Charge Reform Notice seems to contemplate for common carriers. See, e.g., Access Charge Reform Notice of Proposed Rulemaking, CC Docket No. 96-262 (December 24, 1996) at ¶ 242.

IV. Conclusion

For the reasons stated above and in IXC's December 16, 1996 comments, the Commission should adopt a competitively neutral system for providing and funding universal service. Moreover, only common carriers should be required to contribute to funding universal service.

Respectfully submitted,

A handwritten signature in cursive script that reads "Gary L. Mann" followed by a date "1/9/97".

Gary L. Mann
Director - Regulatory Affairs
IXC Communications, Inc.
98 San Jacinto, Suite 700
Austin, Texas 78701
(512) 434-2517

January 10, 1997

Certificate of Service

I, Susan B. Crawford, hereby certify that on January 10, 1997, I caused a copy of the Reply Comments of IXC Communications, Inc. ("IXC") in CC Docket 96-45 to be served by U.S. Mail, postage prepaid, on each of the individuals shown on the attached service list, which accompanied the Commission's November 18, 1996 Public Notice [DA 96 1891] in CC Docket 96-45.

January 10, 1997

Susan B. Crawford
Susan B. Crawford

Service List

The Honorable Reed E. Hundt, Chairman
Federal Communications Commission
1919 M Street, N.W., Room 814
Washington, D.C. 20554

The Honorable Rachelle B. Chong,
Commissioner
Federal Communications Commission
1919 M Street, N.W., Room 844
Washington, D.C. 20554

The Honorable Susan Ness, Commissioner
Federal Communications Commission
1919 M Street, N.W., Room 832
Washington, D.C. 20554

The Honorable Julia Johnson,
Commissioner
Florida Public Service Commission
2540 Shumard Oak Blvd.
Gerald Gunter Building
Tallahassee, FL 32399-0850

The Honorable Kenneth McClure,
Commissioner
Missouri Public Service Commission
301 W. High Street, Suite 530
Jefferson City, MO 65101

The Honorable Sharon L. Nelson,
Chairman
Washington Utilities and Transportation
Commission
P.O. Box 47250
Olympia, WA 98504-7250

The Honorable Laska Schoenfelder,
Commissioner
South Dakota Public Utilities Commission
State Capitol, 500 E. Capitol Street
Pierre, SD 57501-5070

Martha S. Hogerty
Public Counsel for the State of Missouri
P.O. Box 7800
Jefferson City, MO 65102

Paul E. Pederson, State Staff Chair
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102

Lisa Boehley
Federal Communications Commission
2100 M Street, N.W., Room 8605
Washington, D.C. 20554

Charles Bolle
South Dakota Public Utilities Commission
State Capitol, 500 E. Capitol Street
Pierre, SD 57501-5070

Deonne Bruning
Nebraska Public Service Commission
300 The Atrium
1200 N Street, P.O. Box 94927
Lincoln, NE 68509-4927

James Casserly
Federal Communications Commission
Office of Commissioner Ness
1919 M Street, Room 832
Washington, D.C. 20554

John Clark
Federal Communications Commission
2100 M Street, N.W., Room 8619
Washington, D.C. 20554

Bryan Clopton
Federal Communications Commission
2100 M Street, N.W., Room 8615
Washington, D.C. 20554

Irene Flannery
Federal Communications Commission
2100 M Street, N.W., Room 8922
Washington, D.C. 20554

Daniel Gonzalez
Federal Communications Commission
Office of Commissioner Chong
1919 M Street, N.W., Room 844
Washington, D.C. 20554

Emily Hoffnar
Federal Communications Commission
2100 M Street, N.W., Room 8623
Washington, D.C. 20554

L. Charles Keller
Federal Communications Commission
2100 M Street, N.W., Room 8918
Washington, D.C. 20554

Lori Kenyon
Alaska Public Utilities Commission
1016 West Sixth Avenue, Suite 400
Anchorage, AK 99501

David Krech
Federal Communications Commission
2025 M Street, N.W., Room 7130
Washington, D.C. 20554

Debra M. Kriete
Pennsylvania Public Utilities Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Diane Law
Federal Communications Commission
2100 M Street, N.W., Room 8920
Washington, D.C. 20554

Mark Long
Florida Public Service Commission
2540 Shumard Oak Blvd.
Gerald Gunter Building
Tallahassee, FL 32399

Robert Loube
Federal Communications Commission
2100 M Street, N.W., Room 8914
Washington, D.C. 20554

Samuel Loudenslager
Arkansas Public Service Commission
P.O. Box 400
Little Rock, AR 72203-0400

Sandra Makeeff
Iowa Utilities Board
Lucas State Office Building
Des Moines, IA 50319

Philip F. McClelland
Pennsylvania Office of Consumer
Advocate
1425 Strawberry Square
Harrisburg, Pennsylvania 17120

Michael A. McRae
D.C. Office of the People's Counsel
1133 15th Street, N.W. -- Suite 500
Washington, D.C. 20005

Tejal Mehta
Federal Communications Commission
2100 M Street, N.W., Room 8625
Washington, D.C. 20554

Terry Monroe
New York Public Service Commission
3 Empire Plaza
Albany, NY 12223

John Morabito
Deputy Division Chief, Accounting and
Audits
Federal Communications Commission
2000 L Street, N.W., Suite 812
Washington, D.C. 20554

Mark Nadel
Federal Communications Commission
2100 M Street, N.W., Room 8916
Washington, D.C. 20554

John Nakahata
Federal Communications Commission
Office of the Chairman
1919 M Street, N.W., Room 814

Pamela Szymczak
Federal Communications Commission
2100 M Street, N.W., Room 8912
Washington, D.C. 20554

Lee Palagyi
Washington Utilities and Transportation
Commission
1300 South Evergreen Park Drive S.W.
Olympia, WA 98504

Lori Wright
Federal Communications Commission
2100 M Street, N.W., Room 8603
Washington, D.C. 20554

Kimberly Parker
Federal Communications Commission
2100 M Street, N.W., Room 8609
Washington, D.C. 20554

Barry Payne
Indiana Office of the Consumer Counsel
100 North Senate Avenue, Room N501
Indianapolis, IN 46204-2208

Jeanine Poltronieri
Federal Communications Commission
2100 M Street, N.W., Room 8924
Washington, D.C. 20554

James Bradford Ramsay
National Association of Regulatory Utility
Commissioners
P.O. Box 684
Washington, D.C. 20044-0684

Brian Roberts
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

Gary Seigel
Federal Communications Commission
2000 L Street, N.W., Suite 812
Washington, D.C. 20554

Richard Smith
Federal Communications Commission
2100 M Street, N.W., Room 8605
Washington, D.C. 20554